



California Fair Political Practices Commission

December 16, 1993

Ryan Ronco
Elections Division
Office of the Placer County Clerk-
Recorder-Registrar of Voters
P. O. Box 5278
Auburn, CA 95603

Re: Your Request for Advice
Our File No. I-93-422

Dear Mr. Ronco:

You have requested advice concerning the enforcement provisions of the Political Reform Act (the "Act").^{1/} Because your questions are general in nature, we will treat your request as one for informal assistance pursuant to Regulation 18329(c).^{2/}

QUESTIONS

1. May cities charge interest on late filing penalties imposed on candidates and committees?
2. May cities use collection agencies to assist in collecting unpaid late filing penalties?

CONCLUSIONS

1. Under the Act, filing officers are not permitted to charge interest on late filing penalties imposed on candidates

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

and committees. You may wish to contact your city attorney to determine if interest charges can be assessed after a court judgment has been obtained against a late filer.

2. The Act does not prevent filing officers from using private collection agencies to assist in collecting unpaid late filing penalties.

ANALYSIS

The Act provides that penalties may be imposed on persons required to file reports and statements who file late. Late filing penalties are imposed by the filing officer designated in the Act to receive the report or statement. Sections 91013 and 91013.5 provide:

§ 91013. Late Filing of Statement or Report; Fees.

(a) If any person files an original statement or report after any deadline imposed by this act, he or she shall, in addition to any other penalties or remedies established by this act, be liable in the amount of ten dollars (\$10) per day after the deadline until the statement or report is filed, to the officer with whom the statement or report is required to be filed. Liability need not be enforced by the filing officer if on an impartial basis he or she determines that the late filing was not willful and that enforcement of the liability will not further the purposes of the act, except that no liability shall be waived if a statement or report is not filed within 30 days for a statement of economic interest, other than a candidate's statement filed pursuant to Section 87201, five days for a second preelection campaign statement, and 10 days for all other statements or reports, after the filing officer has sent specific written notice of the filing requirement.

(b) If any person files a copy of a statement or report after any deadline imposed by this act, he or she shall, in addition to any other penalties or remedies established by this chapter, be liable in the amount of ten dollars (\$10) per day, starting 10 days, or five days in the case of the second preelection campaign statement, after the officer has sent specific written notice of the filing requirement and until the statement is filed.

(c) The officer shall deposit any funds received under this section into the general fund

of the jurisdiction of which he or she is an officer. No liability under this section shall exceed the cumulative amount stated in the late statement or report, or one hundred dollars (\$100), whichever is greater. (Emphasis added.)

§ 91013.5. Collection of Penalties.

In addition to any other available remedies, the commission or the filing officer may bring a civil action and obtain a judgment in small claims, municipal, or superior court, depending on the jurisdictional amount, for the purpose of collecting any unpaid monetary penalties, fees, or civil penalties imposed pursuant to this title. The venue for this action shall be in the county where the monetary penalties, fees, or civil penalties were imposed by the commission or the filing officer. In order to obtain a judgment in a proceeding under this section, the commission or filing officer shall show, following the procedures and rules of evidence as applied in ordinary civil actions, all of the following:

(a) That the monetary penalties, fees, or civil penalties were imposed following the procedures set forth in this title and implementing regulations.

(b) That the defendant or defendants in the action were notified, by actual or constructive notice, of the imposition of the monetary penalties, fees, or civil penalties.

(c) That a demand for payment has been made by the commission or the filing officer and full payment has not been received.

For campaign disclosure statements, the maximum late filing penalty that can be imposed under Section 91013 is the cumulative amount stated in the late report or statement, or \$100, whichever is greater. The Act contains no provisions allowing for the collection of interest in addition to this penalty. However, once a court judgment has been obtained against a late filer, it is possible that interest can be assessed on the judgment amount. Please consult your city attorney on this question because it is outside the jurisdiction of the Act.

With regard to collection of late filing penalties, neither Section 91013 nor Section 91013.5 prohibits filing officers from utilizing private collection agencies to assist in collecting unpaid late filing penalties. However, the Commission's jurisdiction is limited to the provisions of the Political Reform Act. You may want to consult with your city attorney as to other laws that apply to a city's use of collection agencies.

Ryan Ronco
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I hope this information will be of assistance. If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5662.

Sincerely,

Carla Wardlow

Carla Wardlow
Division Chief
Technical Assistance Division

ADVICE LETTER # I-93-422 REQUESTER: Ronco, Ryan

This letter was written by: Carla Wardlow

The 21 working-days expires: N/A

However, a response has been requested by: _____

Upon review, return to: Carla

Division Chief, TAD N/A

_____APPROVED

Comments: Scott/Steve - I'd like both of you to review this one. Tx

Assistant General Counsel:

SH APPROVED

_____NOT APPROVED

_____Without change

X See changes noted in letter

Comments: Steve, Carla - my proposed changes are in red ink & possibly, even readable.
Scott

General Counsel:

See APPROVED
12-9-93

_____NOT APPROVED

✓ Without change (run by me again when Scott's changes are incorporated)
_____See changes noted in letter

Comments: _____



OFFICE OF

PLACER COUNTY CLERK - RECORDER -
REGISTRAR OF VOTERS

NOV 2

11 59 AM '93

Elections Division • 11544 C Avenue • Auburn, CA 95603 • (916) 889-7088
Mailing: P.O. Box 5278 • Auburn, CA 95604-5278
FAX: (916) 889-7087

JIM McCAULEY
County Clerk-Recorder-Registrar

October 29, 1993

ELSIE MORGAN
Office Manager

Carla Wardlow, Technical Assistance Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95812

Re: Letter No. 93-335

Dear Ms. Wardlow:

Thank you for your assistance thus far in the matter for which we in Placer County have asked your advice. The FAXes you sent were helpful in finding answers to similar problems. But we would still like to receive written answers to some of these questions.

I know you sent my request for a written response over to the Legal Division of the FPPC in order to answer the third question (of three) contained in my letter. I do not know if you know, however, that the Legal Division was unable to answer that question due to insufficient facts.

The gentleman who initiated the questions, our County Clerk Jim McCauley, has decided not to pursue an answer to the third question. Yet he would still like a written opinion to the first two questions in the letter.

If I recall correctly, it seemed to me you stated at the time that you could provide a written response to those questions without much difficulty. If that is true, please write us as soon as you are able with your advice. For your convenience, I have provided a copy of my original letter.

If for some reason you are unable to provide answers in writing, please call or write us. As always, thank you for your consideration of our request.

Sincerely,

Ryan Taylor Ronco
Ryan Ronco
Candidate Services

Enc.



OFFICE OF

PLACER COUNTY CLERK - RECORDER -
REGISTRAR OF VOTERS

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FAX: (916) 889-7087

JIM McCAULEY
County Clerk-Recorder-Registrar

August 31, 1993

ELSIE MORGAN
Office Manager

Fair Political Practices Commission
Technical Assistance Division
428 J Street, Suite 800
Sacramento, CA. 95814

COPY

Dear Sir or Madam:

We need a written opinion regarding questions that have arisen in our county lately. The questions have come from a city in our jurisdiction that is dealing with a committee that refuses to pay the late fee for a Form 490. The city has made the treasurer liable for the balance due, and in the process may ruin his credit rating by sending a collection agency after the treasurer in order to put pressure on him to pay the fine. We wish to know:

1. Can cities charge interest on the balance due to them by a late filer?
2. Can cities turn the problem of retrieving difficult collections over to a collection agency?
3. Can the treasurer be held responsible for the committee in this manner? Can he be held individually liable for the actions of a controlled committee, which has another principal officer (the candidate) that may have more control over the direction of funds and the compliance of FPPC regulations?

We would appreciate an answer to these questions as quick as you are able to respond. We were told, however, that you cannot return a written request to a FAXed transmission, nor can you reply by FAX. Therefore, if it is possible to speed up the process in this manner, we would like the opportunity to physically pick up your written reply at your office as soon as it becomes available. If that is possible, please call Ryan Ronco at (916)889-7095/(916)889-7088 to make arrangements when the time comes.

If not, I have enclosed an envelope for your convenience.

Thank you in advance for the answers of these questions, and
thank you for entertaining this unusual request.

Sincerely yours,

Jim McCauley
County Clerk-Registrar

Ryan Ronco
Candidate Services